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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,978	03/13/2001	Marvin A. Leedom	2506.1009-005	2623

21005 7590 09/20/2005

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EXAMINER

NI, SUHAN

ART UNIT	PAPER NUMBER
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2646

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/804,978

Applicant(s)

LEEDOM ET AL.

Examiner

Suhan Ni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 10-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

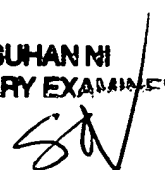
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

SUHAN NI
PRIMARY EXAMINER



DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission for RCE filed on 07/21/2005 has been entered.
2. In response to the request for continued examination under 37 CFR 1.114, the applicant fails to include an amended claim(s) (please see PAIR). Therefore, this office action is responsive to the amendment filed 10/12/2004.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1-6, 9 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saltykov (U. S. Pat. - 6,681,021).

Regarding claim 1, Saltykov discloses a hearing aid, comprising a first half shell; a second half shell (Col. 3, lines 39-40) attached to the first half shell to form a housing (2) fitting into a user's ear canal; a plurality of conventional electrical components mounted within a housing formed by shells (Fig. 1); and securing means as claimed. But Saltykov does not clearly teach that a flexible tip as claimed. Since providing a desirably flexible tip for a hearing aid is

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very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable flexible tip for the hearing aid as an alternate choice, in order to provide users a rather comfortably fitted hearing aid.

Regarding claims 2-3, Saltykov does not clearly teach an interlock-joint securing means as claimed. Since providing securing means for firmly locking two half shells of the hearing aid housing is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable securing means, such as an interlocking joint for securing both shells together as an alternate choice, in order to effectively and efficiently manufacture the hearing aid.

Regarding claims 4-5, Saltykov does not clearly teach a microphone retainer as claimed. Since providing an acoustic filter for mounting a microphone into a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable acoustic filter, such as a foam cushion for mounting a microphone into a hearing aid housing, in order to reduce some undesirable vibrations.

Regarding claim 6, Saltykov does not clearly teach a mushroom shaped tip as claimed. Since providing a mushroom shaped cerumen trapping tip for a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide the mushroom shaped tip for the hearing aid housing, in order to trap cerumen from user's ear canal and make the hearing aid more durable.

Regarding claim 9, Saltykov does not clearly teach an adhesive agent as claimed. Since providing a desirable adhesive agent to seal a hearing aid housing members is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention

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was made to provide a suitable adhesive agent for sealing or further sealing the housing members of the hearing aid as an alternate choice, in order to reduce some undesirable vibration and also make the hearing aid more durable.

Regarding claim 38, Saltykov does not clearly teach a battery as claimed. Since providing a rechargeable or high-capacity and long-last battery, especially commercial available battery, for powering up a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable battery, such as the rechargeable or high-capacity and long-last battery for the hearing aid as an alternate choice, in order to provide convenience to the users, such as a rechargeable hearing aid, or a disposable hearing aid.

4. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saltykov (U. S. Pat. - 6,681,021) in view of Reiter et al. (U. S. Pat. - 5,606,621).

Regarding claims 7-8, Saltykov does not clearly teach a receiver as claimed. Reiter et al. disclose a similar structured hearing aid, comprising an interchangeable tip (18, 22) having a receiver (20). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide the receiver taught by Reiter et al. for the tip of the hearing aid as an alternate choice, in order to deliver an acoustic output to the user more efficiently and effectively.

Response to Amendment

5. Applicant's arguments dated 07/21/2005 have been fully considered, but they are not deemed to be persuasive.

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Regarding the solely independent claim, the cited reference (U. S. Pat. - 6,681,021) does clearly show a hearing aid, comprising a first half shell; a second half shell (Col. 3, lines 39-40) attached to the first half shell to form a housing (2) fitting into a user's ear canal; a plurality of conventional electrical components mounted within a housing formed by shells (Fig. 1); and securing means inherently for ensure the hearing aid to be operational in the canal as claimed.

But, it is true. The prior art does not clearly teach that a flexible tip as claimed. Since providing a desirably flexible tip, such as a cerumen trap (please see class 381, subclass 325) for a hearing aid is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable flexible tip for the hearing aid as an alternate choice, in order to provide users a rather comfortably fitted hearing aid, and make the hearing aid more durable as well.

Regarding all the rejected claims, the applicants argue no motivation to combine the references. It is not necessary that the references actually suggest, expressly or in so many words the changes or improvements that applicants have made. The test for combining references is what the references as whole would have suggested to one of ordinary skilled in the art. **In re Sheckler, 168 USPQ 716 (CCPA 1971); In re Mlaughlin 170 USPQ 209 (CCPA 1971); In re Young 159 USPQ 715 (CCPA 1968).**

As to the combination of the prior art with well-known limitations has failed to teach applicants' claimed invention, but the Examiner respectfully disagrees. The combination of these references teaches the recited claim limitations.

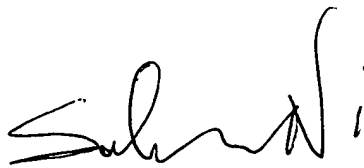
Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is **(703)-308-9322**, and the number for fax machine is **(703)-305-9508**. The examiner can normally be reached on Monday through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at **(703) 305-4708**.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

8. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is **(703) 305-3900**.

September 13, 2005


SUHAN NI
PRIMARY EXAMINER